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Brian Lim Yen Wei & Ors v Ng Geock Sin

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HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO WA-22NCvC-489–09 OF 2022
AHMAD SHAHRIR J
30 DECEMBER 2024

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Succession — Administrators — Administrators pendente lite — Defendants applied for appointment of joint administrators pendente lite — Whether there was necessity for appointment of joint administrator pendente lite — Whether proposed administrators were in position of conflict of interest — Whether defendant's affidavits were defective due to improper jurat — Whether proposed administrators were qualified — Whether plaintiffs could be appointed as administrators pendente lite considering animosity between parties — Probate and Administration Act 1959 ss 19 & 39 — Rules of Court 2012 O 41 r 3 & O 72 r 20

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In the main suit, the plaintiffs applied for the appointment of the first plaintiff as sole administrator of the estate of the late Lim Kim Seng ('the deceased') who passed away intestate. The defendant who was the mother of the deceased and the grandmother of the plaintiffs opposed such application. The defendant then filed an application via encl 5 for the appointment of independent joint administrators *pendente lite* to preserve and manage the deceased's estate pending the determination of the main suit for letters of administration. In this regard, both the joint administrators proposed by the defendant were chartered accountants with extensive experience in estate administration. In response, the plaintiffs filed a similar application via encl 94. The plaintiffs raised several objections to the appointment of the joint administrators *pendente lite*. The plaintiffs submitted that: (a) there was no necessity for such appointment as there were no urgent debts requiring immediate attention; (b) the proposed administrators were in a position of conflict of interest; (c) the defendant's affidavits were defective due to improper jurat; and (d) the first plaintiff was already managing the estate affairs.

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Held, allowing encl 5 with costs in the cause and dismissing encl 94:

(1) On the question of necessity, the court's power to appoint an administrator *pendente lite* stemmed from s 19 of the Probate and Administration Act 1959 ('Act 97') and O 72 r 20 of the Rules of Court 2012. The principles governing such appointment were expounded in *Fatimah Bee Alias Batcha Ammal v Mohideen Batcha, Attorney of Shaik Dawood* [1946] 1 MLJ 112, where it was held that the court must be

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satisfied there was some proper object or necessity for making the appointment (see paras 11–12).

(2) In considering the application, the court found that the substantial size and nature of assets in the estate strongly justified the appointment of an administrator *pendente lite*. Further, the plaintiffs' assertion that the first plaintiff was already managing the estate actually reinforced the necessity for appointment. The first plaintiff admitted that he had been 'continuously administering' the estate by dealing with tenants, collecting rent, and making maintenance payments. Clearly, this amounted to intermeddling with the estate without lawful authority because s 39 of Act 97 clearly vested the estate in Amanah Raya Bhd until letters of administration were granted. In addition, the Court of Appeal in *Tan Boon Thien & Anor v Tan Poh Lee & Ors* [2021] 3 MLJ 61 emphasised that where there was deep animosity between parties, the appointment of an administrator became 'urgent, imperative and wholly necessary' to handle estate affairs like payment of taxes, collection of rentals, and renewal of tenancies (see paras 14 & 16–17).

(3) On the alleged conflict of interest, the plaintiffs argued that the proposed administrators were unsuitable as they were involved in the corporate voluntary arrangement for Greendev Sdn Bhd, a subsidiary of estate debtor Dergahayu Sdn Bhd. The court found this contention lacked merit. The evidence showed that while Andersen Corp Restructuring Sdn Bhd (where the nominees were directors) was previously engaged, they resigned from that engagement on 28 March 2022. That was well before accepting the present nomination. Moreover, the nominees were proposed in their personal capacities and would be personally liable for any breach of duties (see para 18).

(4) The court found that the challenge to the defendant's affidavits based on defective jurat was equally unsustainable. The plaintiffs argued that as an illiterate person, the defendant's affidavits should comply with O 41 r 3 of the Rules of Court 2012. However, there was no evidence that the defendant was 'illiterate' in the sense of being 'buta huruf' as explained in *Fulcrum Capital Sdn Bhd v Low Kon Yang* [2003] 4 MLJ 509. The defendant signed her affidavits and they were properly affirmed before a Notary Public in Singapore with translation provided (see para 19).

(5) The proposed administrators were eminently qualified. Lim Tian Huat had prior experience as administrator *pendente lite* and both nominees held liquidator's licenses and had extensive experience in the accounting industry. The suggestion that the first and second plaintiffs should be appointed instead was untenable given the clear animosity between parties. In *Tebin bin Mostapa (as administrator of the estate of Hj Mostapa bin Asan, deceased) v Hulba-Danyal bin Balia & Anor (as joint administrators of the estate of Balia bin Munir, deceased)* [2020] 4 MLJ

721, the Federal Court explained the position of an administrator *pendente lite* who was normally a person neutral and unconnected to the dispute between the parties in a probate action (see paras 20–21).

[Bahasa Malaysia summary

Dalam saman utama, plaintif-plaintif memohon pelantikan plaintif pertama sebagai pentadbir tunggal harta pusaka mendiang Lim Kim Seng ('si mati') yang meninggal dunia tanpa wasiat. Defendan yang merupakan ibu kepada si mati dan nenek kepada plaintif-plaintif menentang permohonan tersebut. Defendan kemudiannya memfailkan permohonan melalui lampiran 5 untuk pelantikan pentadbir bersama bebas *pendente lite* bagi memelihara dan menguruskan harta pusaka si mati sementara menunggu penentuan saman utama untuk surat kuasa mentadbir. Dalam hal ini, kedua-dua pentadbir bersama yang dicadangkan oleh defendan adalah akauntan bertauliah yang mempunyai pengalaman luas dalam pentadbiran harta pusaka. Sebagai tindak balas, plaintif-plaintif memfailkan permohonan yang serupa melalui lampiran 94. Plaintif-plaintif membangkitkan beberapa bantahan terhadap pelantikan pentadbir bersama *pendente lite*. Plaintif-plaintif berhujah bahawa: (a) tiada keperluan untuk pelantikan tersebut kerana tiada hutang mendesak yang memerlukan perhatian segera; (b) pentadbir-pentadbir yang dicadangkan mempunyai konflik kepentingan; (c) afidavit defendan cacat disebabkan oleh jurat yang cacat; dan (d) plaintif pertama telah pun menguruskan hal ehwal harta pusaka tersebut.

Diputuskan, membenarkan lampiran 5 dengan kos di dalam kausa, dan menolak lampiran 94:

(1) Mengenai persoalan keperluan, kuasa mahkamah untuk melantik pentadbir *pendente lite* berpunca daripada s 19 Akta Probet dan Pentadbiran 1959 ('Akta 97') dan A 72 k 20 Kaedah-Kaedah Mahkamah 2012. Prinsip-prinsip yang mengawal pelantikan tersebut telah dihuraikan dalam *Fatimah Bee Alias Batcha Ammal v Mohideen Batcha, Attorney of Shaik Dawood* [1946] 1 MLJ 112, di mana diputuskan bahawa mahkamah harus berpuas hati bahawa terdapat beberapa objek atau keperluan yang wajar untuk membuat pelantikan tersebut (lihat perenggan 11–12).

(2) Dalam mempertimbangkan permohonan semasa, mahkamah mendapati bahawa saiz dan sifat aset yang besar dalam harta pusaka tersebut sangat mewajarkan pelantikan pentadbir *pendente lite*. Tambahan pula, dakwaan plaintif-plaintif bahawa plaintif pertama telah menguruskan harta pusaka tersebut sebenarnya mengukuhkan lagi keperluan untuk pelantikan tersebut. Plaintif pertama mengakui bahawa dia telah 'terus mentadbir' harta pusaka tersebut dengan berurusan dengan penyewa, mengutip sewa, dan membuat bayaran penyelenggaraan. Jelas sekali, ini bersamaan dengan campur tangan

dengan harta pusaka tersebut tanpa kuasa yang sah kerana s 39 Akta 97 jelas meletakkan harta pusaka tersebut pada Amanah Raya Bhd sehingga surat kuasa mentadbir diberikan. Di samping itu, Mahkamah Rayuan dalam kes *Tan Boon Thien & Anor v Tan Poh Lee & Ors* [2021] 3 MLJ 61 menekankan bahawa jika terdapat permusuhan yang mendalam antara pihak-pihak, pelantikan pentadbir menjadi 'urgent, imperative and wholly necessary' untuk mengendalikan urusan harta pusaka seperti pembayaran cukai, kutipan sewa, dan pembaharuan penyewaan (lihat perenggan 14 & 16–17).

(3) Mengenai dakwaan konflik kepentingan, plaintif-plaintif berhujah bahawa pentadbir-pentadbir yang dicadangkan tidak sesuai kerana mereka terlibat dalam pengaturan sukarela korporat untuk Greendev Sdn Bhd, anak syarikat penghutang harta pusaka Dergahayu Sdn Bhd. Mahkamah mendapati hujah ini tidak mempunyai merit. Keterangan menunjukkan bahawa walaupun Andersen Corp Restructuring Sdn Bhd (di mana calon-calon tersebut adalah pengarah) sebelum ini telah dilantik, mereka meletak jawatan daripada pelantikan tersebut pada 28 Mac 2022. Itu adalah jauh sebelum penerimaan pencalonan semasa. Selain itu, calon-calon tersebut telah dicadangkan atas kapasiti peribadi mereka dan akan bertanggungjawab secara peribadi atas apa-apa pelanggaran tugas (lihat perenggan 18).

(4) Mahkamah mendapati bahawa cabaran terhadap afidavit defendan berdasarkan jurat yang cacat juga tidak dapat dikekalkan. Plaintif-plaintif berhujah bahawa sebagai seorang yang 'illiterate', afidavit defendan harus mematuhi A 41 k 3 Kaedah-Kaedah Mahkamah 2012. Walau bagaimanapun, tiada keterangan bahawa defendan 'illiterate' dalam erti kata 'buta huruf' seperti yang dijelaskan dalam *Fulcrum Capital Sdn Bhd v Low Kon Yang* [2003] 4 MLJ 509. Defendan menandatangani afidavitnya dan ia telah disahkan dengan betul di hadapan Notari Awam di Singapura dengan terjemahan disediakan (lihat perenggan 19).

(5) Pentadbir-pentadbir yang dicadangkan adalah sangat berkelayakan. Lim Tian Huat mempunyai pengalaman sebagai pentadbir *pendente lite* dan kedua-dua calon tersebut juga memegang lesen penyelesai dan mempunyai pengalaman yang luas dalam industri perakaunan. Sebaliknya, cadangan bahawa plaintif pertama dan kedua harus dilantik tidak dapat dipertahankan memandangkan permusuhan yang jelas antara pihak-pihak. Dalam kes *Tebin bin Mostapa (as administrator of the estate of Hj Mostapa bin Asan, deceased) v Hulba-Danyal bin Balia & Anor (as joint administrators of the estate of Balia bin Munir, deceased)* [2020] 4 MLJ 721, Mahkamah Persekutuan menjelaskan kedudukan pentadbir *pendente lite* yang biasanya seorang yang neutral dan tidak berkaitan

dengan pertikaian antara pihak-pihak dalam tindakan probet (lihat perenggan 20–21).] A

Cases referred to

Bevan (deceased), Re, Bevan v Houldsworth [1948] 1 All ER 271, CA (refd) B
Fatimah Bee Alias Batcha Ammal v Mohideen Batcha, Attorney of Shaik Dawood [1946] 1 MLJ 112; [1941] 1 LNS 44; [1941] CLJU 11 (refd)
Fulcrum Capital Sdn Bhd v Low Kon Yang [2003] 4 MLJ 509; [2003] 8 CLJ 149, HC (refd)
Tan Boon Thien & Anor v Tan Poh Lee & Ors [2021] 3 MLJ 61; [2021] 1 CLJ 391, CA (refd) C
Tebin bin Mostapa (as administrator of the estate of Hj Mostapa bin Asan, deceased) v Hulba-Danyal bin Balia & Anor (as joint administrators of the estate of Balia bin Munir, deceased) [2020] 4 MLJ 721; [2020] 7 CLJ 561; [2020] 4 MLRA 394; [2020] 5 AMR 579, FC (refd) D

Legislation referred to

Probate and Administration Act 1959 ss 19, 39
Rules of Court 2012 O 41 r 3, O 72 r 20

Chen Wei Yang (with Lee Jia Fu) (Josephine, LK Chow & Co) for the plaintiff. E
T Gunaseelan (with Kumaradevan Rajadevan) (Gunaseelan & Assoc) for the defendant.

Ahmad Shahrir J: F

INTRODUCTION

[1] For purposes of this judgment, the parties are referred to in their respective capacities in the main action. G

[2] This was an application filed by the defendant, Ng Geock Sin, for the appointment of independent joint administrators *pendente lite* to preserve and manage the deceased's estate pending the determination of the main suit for letters of administration. The suit is in relation to the administration of the estate of the late Lim Kim Seng who passed away intestate in April 2021. The defendant is the mother of the deceased and grandmother of the plaintiffs. H

[3] Subsequent to this application in encl 5, the plaintiffs filed a similar application in encl 94. In encl 94, the plaintiffs instead sought to appoint the first and second plaintiffs themselves as the joint administrator *pendente lite.* Both encls 5 and 94 were heard together by agreement of the parties. I

[4] The main dispute was between the plaintiffs who sought for the

appointment of the first plaintiff as sole administrator and the defendant who opposed it. Having perused the application and considered the respective position of the parties as deliberated in the submissions, I allowed the defendant's application in encl 5 for the appointment of joint administrators *pendente lite.*

[5] Since encl 5 was allowed, encl 94 was consequently dismissed.

[6] The plaintiffs were not satisfied with the decision and appealed.

BRIEF BACKGROUND FACTS

[7] The deceased, Lim Kim Seng, passed away intestate in April 2021 leaving behind an estate conservatively valued at over RM20m. The estate comprises real properties including residential and commercial units, gold and silver bars, bank accounts, and a substantial debt allegedly owed by Dergahayu Sdn Bhd.

[8] In September 2022, the plaintiffs filed the present suit seeking the appointment of the first plaintiff as sole administrator of the estate. This followed an earlier application by the first plaintiff in Originating Summons No WA-31NCvC-2937–12 of 2021.

[9] In October 2022, the defendant filed this application (encl 5) seeking the appointment of Lim Tian Huat and Chiang Teng Guan as the joint administrators *pendente lite* pending determination of the main suit. Both the nominees are chartered accountants with extensive experience in estate administration.

ANALYSIS AND FINDINGS

[10] The plaintiffs raised several objections to the appointment of the joint administrators *pendente lite.* In crux, their main contentions were as follows:

(a) there was no necessity for such appointment as there were no urgent debts requiring immediate attention;

(b) the proposed administrators were in a position of conflict of interest;

(c) the defendant's affidavits were defective due to improper *jurat*; and

(d) the first plaintiff was already managing the estate affairs.

[11] On the question of necessity, the court's power to appoint an administrator *pendente lite* stems from s 19 of the Probate and Administration Act 1959 and O 72 r 20 of the Rules of Court 2012.

Section 19 of the Probate and Administration Act 1959 reads as follows:

> 19 Letters of administration pendente lite
>
> Pending any probate action, letters of administration may be granted to such person as the Court may appoint, limited so that the administrator shall not be empowered to distribute the estate, and shall be subject to such control by, and direction of, the Court, as the Court deems fit; and subject to that limitation the administrator so appointed shall have all the rights and powers of a general administrator.

Order 72 r 20 of the Rules of Court 2012 provides as follows:

> 20 Administration pending trial (O 72 r 20)
>
> (1) An application under section 19 of the Probate and Administration Act 1959 for the grant of administration may be made to the Registrar by writ.
>
> (2) An administrator to whom a grant is made under section 19 of the Act must, at the time when he begins proceedings for taxation of his costs, or at such other time as the Registrar may direct, produce at the Registry an account (verified by affidavit) of the moneys and other property received or paid or otherwise dealt with by him in his capacity as an administrator.
>
> (3) Unless the Court otherwise directs, the account shall be referred to the Registrar for examination and the Registrar shall give such directions as may be necessary for examination of the administrator's costs.
>
> (4) Except where the remuneration of the administrator has been fixed by a Judge, the Registrar shall, on the completion of the examination of the administrator's account, and taxation of his costs, asses;s and provide for the administrator's remuneration.

[12] The principles governing such appointment were expounded in *Fatimah Bee Alias Batcha Ammal v Mohideen Batcha, Attorney of Shaik Dawood* [1946] 1 MLJ 112; [1941] 1 LNS 44; [1941] CLJU 11, where it was held that the court must be satisfied there is some proper object or necessity for making the appointment.

[13] In *Tan Boon Thien & Anor v Tan Poh Lee & Ors* [2021] 3 MLJ 61; [2021] 1 CLJ 391 (CA), the Court of Appeal placed emphasis on the same principles in the following words of His Lordship the Honourable S Nantha Balan JCA:

> [58] The principle that is applicable when a court is called upon to exercise its discretion to appoint an administrator *pendente lite* is whether it has been shown that there is some proper object, some necessity, for making the appointment (see: *Fatimah Bee Alias Batcha Ammal v Mohideen Batcha, Attorney of Shaik Dawood* [1946] 1 MLJ 112; [1941] 1 LNS 44; [1941] CLJU 11 (HC)). That burden naturally falls on the first respondent as the protagonist of the application (encl 6).

A [59] There is undoubtedly a spate of litigation and extreme animosity between the parties all arising out of and/or in connection with the impugned will, the deed or the PA. Obviously, it will be quite some time before the dust of litigation settles.

B [60] In the meanwhile, it is clear that there is a need to preserve the assets of the estate (including those assets which are disputed as to their title and/or ownership or rights attached thereto) and such preservation will preeminently be achieved by the appointment of an administrator *pendente lite*.

C [61] The administrator *pendente lite* is undoubtedly an officer of the court and is answerable for any omission or misconduct or wrongdoing, but that is a different matter altogether. The administrator is in fact subject to control of the court. If there is basis for contending that the appointee is unsuitable, the relevant party who has an issue is entitled to make the appropriate application and remove the appointee and have him/her replaced with another appointee.

D **[14]** In considering the application, I found the substantial size and nature of assets in the estate strongly justify the appointment. As explained in *Re Bevan (deceased), Bevan v Houldsworth* [1948] 1 All ER 271, where Lord Greene MR observed that a substantial estate comprising securities, real estate requiring rent collection, and personal chattels that need safeguarding would warrant such appointment. His Lordship emphasised that without an administrator, E 'the fruits of the estate cannot be properly collected'.

[15] The estate here required active management in terms of payment of quit rent, assessment rates, maintenance charges for the properties, collection F of rental income and preservation of valuable commodities like gold and silver bars. More critically, there appeared to be a substantial debt of over RM32m owed by Dergahayu Sdn Bhd that needed investigation and possible recovery action to prevent it from becoming time-barred.

G **[16]** In my considered view, the plaintiffs' assertion that the first plaintiff was already managing the estate actually reinforced the necessity for appointment. By the first plaintiff's own admission in para 28 of his affidavit, he has been 'continuously administering' the estate by dealing with tenants, collecting rent, and making maintenance payments. Clearly, this amounted to intermeddling H with the estate without lawful authority. Section 39 of the Probate and Administration Act 1959 clearly vests the estate in Amanah Raya Bhd until letters of administration are granted.

[17] The Court of Appeal in *Tan Boon Thien* emphasised that where there is I deep animosity between parties, the appointment of an administrator becomes 'urgent, imperative and wholly necessary' to handle estate affairs like payment of taxes, collection of rentals, and renewal of tenancies.

[18] On the alleged conflict of interest, the plaintiffs argued that the

proposed administrators were unsuitable as they were involved in the corporate voluntary arrangement for Greendev Sdn Bhd, a subsidiary of estate debtor Dergahayu Sdn Bhd. I found this contention lacked merit. The evidence showed that while Andersen Corp Restructuring Sdn Bhd (where the nominees are directors) was previously engaged, they resigned from that engagement on 28 March 2022. That was well before accepting this nomination. Moreover, the nominees were proposed in their personal capacities and would be personally liable for any breach of duties.

[19] Respectfully, I found that the challenge to the defendant's affidavits based on defective jurat was equally unsustainable. The plaintiffs argue that as an illiterate person, the defendant's affidavits should comply with O 41 r 3 of the Rules of Court 2012. However, there was no evidence that the defendant was 'illiterate' in the sense of being 'buta huruf' as explained in *Fulcrum Capital Sdn Bhd v Low Kon Yang* [2003] 4 MLJ 509; [2003] 8 CLJ 149 per Abdul Aziz Mohamad J. The defendant signed her affidavits and they were properly affirmed before a Notary Public in Singapore with translation provided.

[20] The proposed administrators are eminently qualified. Lim Tian Huat has prior experience as administrator *pendente lite,* having been appointed by the High Court in Suit No WA-22NCvC-703–10 of 2018 and subsequently affirmed by the Court of Appeal in *Tan Boon Thien.* Both nominees hold liquidator's licenses and have extensive experience in the accounting industry.

[21] The suggestion that the first and second plaintiffs should be appointed instead was untenable given the clear animosity between parties. In *Tebin bin Mostapa (as administrator of the estate of Hj Mostapa bin Asan, deceased) v Hulba-Danyal bin Balia & Anor (as joint administrators of the estate of Balia bin Munir, deceased)* [2020] 4 MLJ 721; [2020] 7 CLJ 561; [2020] 4 MLRA 394; [2020] 5 AMR 579 (FC), the Federal Court explained the position of an administrator *pendente lite* who is normally a person neutral and unconnected to the dispute between the parties in a probate action. An administrator *pendente lite* is usually appointed by the court to preserve the assets of the estate pending the determination of the probate action. In delivering the decision of the apex court, His Lordship the Honourable Vernon Ong Lam Kiat FCJ explained as follows:

> Such administrator has all the rights and powers of a general administrator, other than the right to distribute the estate assets. He is very much subject to the control of the court, and acts under its direction, and the authority of s 19 of the Probate and Administration Act 1959 (Probate Act 1959). *The purpose of this appointment is to provide interim administration of the estate until the action has being concluded, and basically nothing else*. Once the action has been concluded, this grant will cease, either upon the will been proved and probate granted, or upon the will being set aside and letters of administration granted in its place. (Emphasis added.)

CONCLUSION

[22] For the reasons stated above, I allowed encl 5 for prayers 1, 2(a) to (d), 3, 4, 5, 6 and 7. Cost in the cause. I further made the following orders:

(a) for prayer 1, the appointment of the joint administrator *pendente lite* shall be up to the disposal of this action before the High Court;

(b) for prayer 3, the period allowed is three months from the date of this order. For clarity, the period of three months was agreed between the parties; and

(c) for prayer 4, the application shall be made not later than three weeks from the date of this order. For clarity, the period of three weeks was agreed between the parties.

[23] In consequence of the decision of this court in encl 5, encl 94 was dismissed.

Enclosure 5 allowed with costs in the cause; encl 94 dismissed.

Reported by Dzulqarnain Ab Fatar